



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/172819

PRELIMINARY RECITALS

Pursuant to a petition filed March 16, 2016, under Wis. Admin. Code. §HA 3.03, to review a decision by the Marathon County Dept. of Social Services to recover FoodShare benefits (FS), a hearing was held on May 19, 2016, at Wausau, Wisconsin, with the judge appearing by telephone. A hearing set for April 13, 2016 was rescheduled at the petitioner's request.

The issue for determination is whether petitioner is liable for an FS overpayment issued to a family member's household.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Marathon County Dept. of Social Services
400 E. Thomas Street
Wausau, WI 54403

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Marathon County.
2. Petitioner resides in a household that includes his wife, their children, petitioner's parents, and his two younger brothers. Petitioner and his family lived in the home during the entire period of September, 2014 through February, 2016.

3. On September 29, 2014, petitioner's mother applied for FS. She reported that the household consisted of herself and one younger child. She did not mention petitioner and his family on the application. FS were opened for the two-person household.
4. In early 2016 the county discovered that petitioner and his family lived in the household, as well as petitioner's father. An investigator went to the home on February 4, 2016. Petitioner spoke to the investigator and said that the entire family eats together, and that he and his wife provide the majority of the food.
5. Petitioner and his wife both are employed. If they and their children were added to his mother's FS household, the entire household would have been ineligible for FS during the entire period September, 2014 through February, 2016. Petitioner's mother's FS closed effective March 1, 2016 because petitioner's and his wife's income put the household over the FS income limit.
6. By notices dated March 14, 2016, the county informed petitioner that he was liable for an overpayment issued on his mother's FS case totaling of \$2,614 in FS from September 29, 2014 through February 29, 2016, claim nos. [REDACTED]

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4); FS Handbook, Appendix 7.3.1.2. According to the FS Handbook provision liable parties include adults who should have been included in the household during the overpayment period.

To determine an overpayment, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). See also the FS Handbook, Appendix 3.3.1.

In petitioner's mother's concurrent FS overpayment case no. FOP-172818 I conclude that the overpayment was determined correctly. Because petitioner was an adult living in the household who should have been included in the FS household, he is liable under Wisconsin state FS policy.

CONCLUSIONS OF LAW

Petitioner is liable for an FS overpayment issued to his mother because he was an adult living in the FS household who should have been included as part of the overpaid household unit.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 24th day of May, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 24, 2016.

Marathon County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability